



**THE ATTORNEY GENERAL
OF TEXAS**

March 23, 1989

**JIM MATTON
ATTORNEY GENERAL**

Mr. C. Ed Davis
Special Counsel
Texas Employment Commission
15th Street and Congress Avenue
Austin, Texas 78778

LO-89-32

Dear Mr. Davis:

This is to acknowledge your letter of January 31, 1989, to this office regarding the amount the Texas Employment Commission (TEC) may charge requestors for the TEC's new Appeals Policy and Precedent Manual (the Manual). The Manual is used primarily by claims examiners and appeals referees as a guide for making case-by-case determinations of unemployment compensation claims. See Mollinedo v. Texas Employment Commission, 662 S.W.2d 732, 738 Tex. App. - Houston [1st Dist.] 1983, writ ref'd n.r.e.). The TEC completed a major revision of the manual in 1988 and has made the Manual available to the public for the sum of \$95.55. An individual who received a copy of the newly revised Manual and paid the aforementioned amount requested and received records from the TEC that reflect the printing cost for 500 copies of the Manual as being \$3,676.43. He now complains to this office that he was overcharged for his copy of the Manual and contends that the TEC should only have charged him one five-hundredth of the total printing costs, or \$7.35.

You contend otherwise. In your letter you state:

As has always been the case, over time all updated copies of the Manual will consist more and more of pages produced at different times, in different places, with different elements of 'actual costs.' It was pure chance that [this person's] purchase occurred during the very brief window in time when 'actual cost' might have been determined in the most technical sense. As suggested above, we believe that exercise would ignore the shifting nature and consequent changing cost of production of the Manual and would

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improperly assign to the Commission the task of tracking a moving target.

Section 9(a) of the Open Records Act directs the (now) State Purchasing and General Services Commission (SPGSC) 'to determine the actual cost of standard size reproductions' and 'to publish these cost figures for use by agencies' With regard to the materials at issue, that is, standard-size documents numbering more than [sic] 50 pages in length, that charge has been set by SPGSC as '\$.85 for the first page and \$.15 for each additional page.'

. . . .

In short, it is the Commission's position that the logic of our particular situation, and both the logic and letter of the law required the practice of uniformly charging SPGSC's base price for a document which will, over time, consist of pages produced under varying conditions at varying costs.

We infer from your letter that it is your contention that the rules established by SPGSC are mandatory to the extent that they establish minimum costs of reproduction of standard sized copies. If so, we disagree. 1 T.A.C. section 111.62 provides:

The charges reflected in this subsection are guidelines to be applied as the individual situation dictates. The determination of whether information is or is not readily available is left to each governmental entity. The charge for office machine copies of pages up to and including legal size (8½ inches by 14 inches) are as follows. . . . (Emphasis added.)

Even if the guidelines establish mandatory minimum charges, which they do not, in this instance the TEC has incorrectly applied the cost guidelines established in 1 T.A.C. section 111.62 to the Manual. Those guidelines pertain to "office machine copies." The Manual was not, however, reproduced on an "office machine," but rather in a print shop where the Manual was reproduced at a fraction of the cost the TEC would incur using an office photocopier.

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Section 9(a) of the Open Records Act provides:

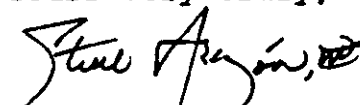
The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal size shall not be excessive. The State Board of Control shall from time to time determine the actual cost of standard size reproductions and shall periodically publish these cost figures for use by agencies in determining charges to be made pursuant to this Act. The cost of obtaining a standard or legal size photographic reproduction shall be in an amount that reasonably includes all costs related to reproducing the record, including costs of materials, labor, and overhead unless the request is for 50 pages or less of readily available information. (Emphasis added.)

The intent of section 9(a) is clear: the TEC may charge only an amount that includes "all costs related to reproducing the record." It requires that a "technical" assessment of the costs serve as the basis of the cost to the requestor. Section 9 gives a governmental body the authority to recoup only its actual costs in reproducing public records, not the cumulative costs of producing or creating records that are essential to the commission's efficient operation. It does not require a member of the public requesting information under the Open Records Act to bear costs that the governmental body incurs in fulfillment of its statutory responsibilities other than those directly related to the reproduction of public records. Nor does it authorize the commission to capture the prospective costs of maintaining such records. The Open Records Act does not contemplate that governmental bodies will reap a profit in the collection of costs pursuant to section 9. See Open Records Decision No. 489 (1988).

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Furthermore, the evolutionary nature of the Manual does not alter the simple fact that in this instance an individual requested a single document that was reproduced in a single transaction at an ascertained cost. The TEC, therefore, should charge only the actual cost incurred by the TEC in the Manual's reproduction. Any amount the TEC has charged above actual costs should be reimbursed to the requestors.

Yours very truly,



Prepared by Steve Aragon
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